BOOK REVIEWS

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JUSTICE AND THE POOR. By REGINALD HEBER SMITH. Published by the Carnegie Foundation for the Advancement of Teaching. New York: 1919. pp. xiv, 271.

This book is not, as its title might possibly suggest, an addition to the long list of publications blindly attacking the courts and our administration of justice, with which the public has been surfeited in recent years. On the contrary, it is a painstaking, intelligent and fair-minded study of the relations of law administration to the poor in the United States. It is characterized by thoroughness in the collection and verification of data, by scientific method in the study of the problem, and skill in its presentation.

The author's main thesis is that there is a substantial denial of justice to the poor in the United States, due to three principal causes: delay, court costs and fees, and expense of counsel. The major portion of the volume is devoted to a consideration of the remedial agencies which may be availed of to secure a more equal administration of the law in those cases which especially affect the lives of the poor. These agencies are small claims courts, administrative tribunals, administrative officials, assigned counsel, the public defender in criminal cases, and legal aid organizations. But the author has gathered detailed information showing the extent and effectiveness with which these agencies have been employed in law administration in the United States, and in general it may be said that he favors the development and strengthening of all of them as means of securing a more equal and just administration of the law.

The impression which the reader first gains from this volume and one which is strengthened and confirmed as he studies it, is that under the conditions which actually exist in the large cities and industrial communities of this country our legal machinery does not afford to the poor suitor adequate and speedy justice.

Senator Root will certainly not be accused of being anything but a loyal supporter of the courts or of believing that justice can be secured and perpetuated except under law and through the agency of courts, but in the foreword which he has written for this book he says: "Nor can any one question that the highest obligation of government is to secure justice for those who because they are poor and weak and friendless find it hard to maintain their own rights. This book shows that we have not been performing that duty very satisfactorily and that we ought to bestir ourselves to do better." And elsewhere he says: "I think the true criticism which we could make of our own conduct is that we have been so busy about our individual affairs, that we have been slow to appreciate the conditions which to so great an extent have put justice beyond the reach of the poor. But we cannot confine ourselves to that criticism much longer. It is time to set our house in order," and this we believe will be the opinion of the fair-minded reader whatever bias he may have with respect to our legal system.

While the author rightly attributes the immediate cause for this failure of justice to delay, court costs and fees, and expenses of counsel, two of them, namely, delay and cost of counsel, are but symptomatic of underlying causes, one of which the author points out in elaborate detail, the other of which, it is believed, he does not sufficiently emphasize.

The first of these underlying causes is the fact that our system of justice and law administration, while well adapted to the litigation of important issues involving rights of substantial money values is nevertheless in some respects so complicated and requires such skill in its application that it practically fails to do justice where the amount involved is small, since the cost of arriving at a just result is disproportionate to the ultimate outcome of the litigation. As the author points out, this defect in our law is due not to the rules of substantive law so much as to the peculiarities of our procedure which imposes an undue burden of expense and delay on the litigant in the small cause.

Herbert Spencer many years ago pointed out the inadequacy of our system of justice because of its costliness to litigants and he conceived the notion advocated in his "Social Statics" that the gratuitous administration of justice was the only remedy for the inequalities which we have come to regard as inevitable in law administration. In these days when the "socialization" of most essential activities of organized society is advocated so freely, this idea does not seem so startling. But it is to be remembered that Spencer made this suggestion in a volume in which he urged the limitation of the activities of the state to the function of government with the minimum interference with the freedom of the activity of the individual. To his mind the administration of justice was preeminently the function of government which should in no way be dependent upon the amount of fees which the injured suitor might be able to pay.

The second underlying cause of unequal administration of the law is one to which the author might well have devoted more attention, namely, the inferior quality of our bar attributable to the fact that because of our democratic traditions we are unwilling or unable to impose adequate requirements on candidates for admission to the bar. This is a point on which the author places little emphasis. Yet there is hardly a page in his book which does not deal with evils in law administration which are due to the fact that the lawyers who serve the poor are all too often incompetent if they are not actually untrustworthy or dishonest.

In this connection overmuch emphasis should not be placed on the assertion that denial of justice is to the poor alone, for we may well add that low professional standards are often an underlying cause of injustice to the well-to-do for even the well-to-do man may be harassed into the settlement of an unjust claim prosecuted by an unscrupulous attorney, after interminable adjournments, delays and petty annoyances.

Any program of law reform or law improvement which would go to the root of the matter should insist that the first step toward adequate law reform is the improvement of the bar by educational methods and by more strict requirements as to the character of applicants for admission to the bar and more adequate and efficient agencies for disbarring the unworthy members of the profession. If we persist in our neglect of these first requirements for the equal and just administration of our laws, we cannot hope that the remedial

agencies dealt with in this volume will effect any real and permanent reform. They will serve as a palliative but they will not effect a cure.

As the author indicates, the remedy for the first of these defects is a modified form of court practice which will eliminate the refinements and technicalities of procedure which, though desirable or even necessary in more important litigations, are not so essential in the small cause and which will also affect the second cause of injustice to some extent by eliminating the lawyer from the trial of the case. This the author proposes to accomplish by the organization of "small claims courts" and "domestic relations courts" in which the cases normally coming before them shall be prosecuted and decided without the intervention of lawyers. He also suggests the establishment of conciliation courts in which the primary effort of the judge or presiding officer shall be the conciliation of prospective litigants rather than the hearing and determination of actual litigations. The author makes out a strong case not only *a priori* but on the basis of the history of courts of this class, for the small claims courts conducted without the aid of counsel, as an agency for simplifying and expediting the administration of justice.

As in the case of most reforms which are theoretically sound there are practical difficulties which will have to be taken account of before we can feel assured that the whole problem will be solved by the creation of such courts. Whatever may be said against formal procedure in small causes, it is nevertheless the most adequate safeguard against the incompetent judge. A study of the cases heard in municipal and justice's courts the country over will show that a very high percentage of the decisions of the judges of those courts are reversed on appeal. But with a burden of costs and expense which in the first instance is imposed on the appellants this indicates that there is always a danger that the small claims court or the conciliation courts, administered without formal procedure and without lawyers, will do injustice unless the judges are men of sufficient character and ability to reach a more just result without the aid of counsel than they are now able to reach with counsel in a very large number of cases. The small claims courts and conciliation courts having jurisdiction over small causes, in which cases are tried and determined without the aid of lawyers, may be and probably will prove to be satisfactory agencies for administering justice if they are presided over by highly competent and conscientious judges. But any plan for the organization of such courts will be inadequate which does not consider ways and means of securing a higher type of judge to administer them than is ordinarily found in the small claims courts in many of the great cities of the country.

The reader will find himself in cordial agreement with the author's conclusions with respect to administrative tribunals in connection with Workmen's Compensation Acts. He seems to establish conclusively that compensation may be more effectively secured for personal injuries and more adequate justice be done in such cases by such tribunals than by the ordinary procedure of courts. Recent history, however, gives emphasis to the suggestion already made that in the adoption of new agencies for the administration of justice, however effective they may be in theory, attention must be given to securing competent and upright men to administer them.

One will have more doubt about the author's conclusions with respect to arbitration. In small causes the small claims court without lawyers or the conciliation court would undoubtedly be more effective

than arbitration, both because they eliminate the procedure and negotiation necessary for the selection of an arbitrator and because the judge of such court would speak with more authority and ought to possess greater skill than the average arbitrator. In important cases it is to be doubted whether arbitration will ever make any substantial progress against the usual methods of court procedure. The fact is that court procedure is the result of some centuries of experience and notwithstanding its many defects it is the best method which has yet been devised for the thorough trial of important controversies. The average client who is party to an important litigation wishes his case thoroughly tried. This is impossible in the case of an ordinary arbitration where the arbitrators are not technically trained men or do not possess the powers of the court to control the proceedings and rule upon evidence. It is believed that the observation of most experienced lawyers is that clients having important litigations are seldom satisfied with the results of arbitration. Often, however, the result is materially affected if not changed by collateral and relatively unimportant matters which in the absence of a formal procedure are allowed to become subject of inquiry and thus to influence the decision.

The author has gleaned much valuable information about the public defender system, the adoption of which he advocates. Notwithstanding the able presentation of his views of the subject most readers will not be fully satisfied either from the author's data or from their own observations that there is serious danger that honest citizens may be unjustly charged with and convicted of crime. Certainly if the danger exists it is due to the failure of prosecuting officers to recognize the fact that they are clothed with quasi-judicial functions which should not be subordinated to their zeal as the state's attorneys. The proposal to cure the evil consequences of the neglect of one public official by the creation of another is of doubtful expediency. There is, however, a grave evil in that the poor, against whom criminal charges are preferred, are often the victims of the "jail lawyer". But here again the root of the evil goes to our careless method of admitting men to the bar and the low professional standards which prevail among the members of a certain section of the bar. Before committing ourselves to the public defender system we may well raise the question whether we should not make a thorough trial of two other remedial agencies; first, the further development of legal aid societies, so that they may be able more extensively than at present to undertake the defense of poor persons charged with crime, and, second, further reform of district attorney's offices, so that the district attorney and his assistants may be made to realize more then they do at present that the responsibility rests upon them for seeing that the interests of the defendant in a criminal case when he is not represented by counsel are more adequately protected.

It should be said that many of the reforms advocated by the author have been adopted in the procedure of the Municipal Courts of New York City. Costs are reduced to a minimum; causes may be expeditiously tried; counsel may be dispensed with; but in practice suitors do not generally find it convenient or expedient to try their cases without lawyers. Delay and burdensome expense are sometimes the result. The actual expense of appeal is also burdensome. In consequence the system is not ideal, though it has been greatly improved in recent years.

Mr. Smith has compiled an extremely interesting and valuable history of Legal Aid Societies in the United States. One cannot read the record of their service without heartily endorsing the author's

conclusions as to their value and importance. No more worthy work can be undertaken both from the standpoint of charity and of improved administration of justice than the expansion of the influence and effectiveness of these societies. They have not received adequate support from the legal profession, principally because they have not made an organized and systematic appeal to members of the bar. This report, printed and widely circulated by the Carnegie Foundation, will spread knowledge of the Legal Aid Movement and increase interest in and support of it both in and outside the profession. With this book at hand a lawyer can no longer have any excuse for ignorance of the problems of the administration of justice in our inferior courts or indifference about them. The legal profession must now realize that it is indeed time for it to set its house in order. It owes to the author and to the Carnegie Foundation a debt of gratitude for gathering this information and making it available.

Harlan F. Stone.

THE LAW OF WAR AND CONTRACT. By H. CAMPBELL. London: OXFORD UNIVERSITY PRESS. 1918. pp. xx, 365.

The author of this volume remarks that no field of English law has been so much affected by the recent war as the law of contract. Certainly no branch of the law has been more profoundly involved. This is so not only in England but in other belligerent countries, according to the degree of their industrial and commercial development. Had the subject been dealt with on general principles the results would not have been harmonious, since the rules prevailing in different countries reflect different conceptions of the effect of war on the relations of those who are generally termed enemies. But in the recent war there was an extraordinarily large number of statutes, proclamations, orders, decrees and regulations by which all sorts of relations were affected. These complex conditions, confusing alike to courts, to lawyers, and to commercial men, naturally gave rise to an enormous amount of litigation in which judges often groped their way to doubtful conclusions.

Mr. Campbell earned the gratitude of the legal profession by endeavoring to analyze the record, to systematize what had been done, and to furnish a guide for future action and interpretation. His work, as he states, grew from notes of his practice in Bombay. It first appeared in an Indian edition and later made its appearance in England. It embraces a survey of reported decisions down to August 1, 1919, with notes of decisions affirmed or reversed down to September 24, 1917. The work shows a firm and intelligent grasp of fundamental principles. The author's statements are clear, precise and compact. His thorough understanding of his subject has enabled him to deal with it in a comparatively brief compass, without omitting or slighting any material point. It presents an agreeable and useful contrast with the "timely" agglomerations of cases to which we are so much accustomed.

John Bassett Moore.

PRESIDENT WILSON'S FOREIGN POLICY. Edited with Introduction and Notes. By JAMES BROWN SCOTT. New York: OXFORD UNIVERSITY PRESS. 1918. pp. xiv, 424.

Alexander Hamilton was a trained lawyer. He combined vision with a powerful facility for understanding and creating legal machinery